

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

CASE NO. 14-08790(MCF)

CARMEN MARIA IBARRA ORTEGA,

CHAPTER 13

Debtor.

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**DEBTOR'S OBJECTION TO CLAIM NO. 2-1  
OF AAFES/MILITARY STAR/EXCHANGE**

**TO THE HONORABLE COURT:**

NOW COMES, Debtor, Carmen Maria Ibarra Ortega, through the undersigned attorney, and very respectfully states and prays:

1. On December 2, 2014, Creditor AAFES/Military Star/Exchange (hereinafter, "Military Star") filed a Proof of Claim, registered as Number 2-1, on account of "goods sold."

2. Military Star's Claim No. 2-1 for a total of \$3,393.10 of ***credit card purchases*** pretends to be secured in the total amount of \$888.10, and contains the following attachments: (1) a Limited Power of Attorney authorizing Bass and Associates, P.C. to execute and file its Proof of Claim; (2) copy Debtor's Military Star Credit Card Application Sheet; (3) two printout pages titled "Transaction Details"; (4) copy of the Military Star Account Statement ending on October 7, 2014; and (5) copy of their credit program disclosures. See Claims Register, No. 2-1.

3. After review of the attached documents, it is evident that Military Star's claim is wholly unsecured, inasmuch as none

of such documents can establish that a security interest was perfected over any items purchased by Debtor.

4. For Military Star to have any security interest over the personal property, i.e., merchandise purchased by Debtor, it would have to establish that it complied with applicable Puerto Rico law governing such security interests, namely, the Puerto Rico Commercial Transaction Act's applicable provisions.<sup>1</sup> See In re Ortiz, 295 B.R. 158, 161-62 (B.A.P. 1st Cir. 2003). Namely, the security agreement must unequivocally state that Military Star: (2) would retain recourse against clearly described personal goods; and (2) would have the right to repossess the specific collateral item in case of default, with such statement immediately before the parties' signatures. See Ortiz, 158 B.R. at 163-65. "A financing statement with a list of collateral and invoices for goods sold and delivered not sufficient to act as a security agreement[.]" Ortiz, 158 B.R. at 162-63, citing In re Arctic Air, Inc., 202 B.R. 533 (Bankr.D.R.I. 1996). Furthermore, if the legal requirements are not met, the documents' recordation

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<sup>1</sup> 19 P.R. Laws Ann. §§ 2001-2207. "[T]he provisions of the *Commercial Transactions Act* apply to "any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods." 19 P.R. Laws Ann. § 2002(1)(a)." See In re Ortiz, 295 B.R. 158, 161 (B.A.P. 1st Cir. 2003). Puerto Rico has not adopted the Uniform Commercial Code in its entirety. The *Commercial Transactions Act* adopted only portions of Articles 5, 7, 8 and 9 of the Uniform Commercial Code. The *Commercial Transactions Act* became effective January 1, 1998. Id.

in an official property registry does not create an enforceable security agreement. Ortiz, 158 B.R. at 162.

5. The documents attached to Military Star's Proof of Claim No. 2-1 do not even constitute a financing statement, but consist of a computer printout stating "transaction details", with no clear description of the purchased items, an account statement, as well as the Credit Application, Limited Power of Attorney and some miscellaneous contractual clauses. Even if the items were considered properly described at the moment of the transaction, which is denied, the agreement at issue does not comply with the requirement that the statement of the purported right to repossess be stated in the line immediately before the parties' signatures. For such reason, the documents at issue do not establish the perfection of any security interest opposable to third parties under Puerto Rico law, for such claim to be considered secured by any of Debtor's property. In light of all foreaid, Military Star's Claim No. 2-1 must be reclassified as completely unsecured, and receive pro-rata distribution with the rest of unsecured creditors.

**WHEREFORE**, Debtor very respectfully requests this Honorable Court to grant the instant objection to Claim No. 2-1 by Military Star and reclassify its claim as completely unsecured.

Within **thirty (30) days** after service as evidenced by the certification, and an additional three (3) days pursuant to Fed.R.Bank.P. 9006(f), if you were served by mail, any party

against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the objection will be deemed unopposed and may be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise. If you file a timely response, the Court may - in its discretion - schedule a hearing.

**CERTIFICATE OF SERVICE:** I hereby certify that this motion has been filed through the Court's CM/ECF system, which will notify the U.S. Trustee, Standing Chapter 13 Trustee, **José R. Carrión**, and that a copy of this motion has been served by regular U.S. Mail on this same date to **AAFES/Military Star/Exchange**, to the address included with its Proof of Claim No. 2-1, and all Creditors and Parties in Interest to their respective addresses of record as they appear in the attached master address list to the address of record, if any are not registered CM/ECF system participants.

In San Juan, Puerto Rico, this 24th day of December, 2014.

/s/ Carlos C. Alsina Batista  
Carlos C. Alsina Batista  
USDC-PR NO. 222801

**CARLOS ALSINA BATISTA LAW OFFICES, PSC**  
638 Aldebaran St.  
Banco de Desarrollo Económico Bldng.  
Second Floor, Suite HQ-7  
San Juan, Puerto Rico 00920  
Tel. (787)781-1882/Fax. (787)793-6733  
Email: [calsina@prquiebra.com](mailto:calsina@prquiebra.com)

Label Matrix for local noticing

0104-3

Case 14-08790-MCF13

District of Puerto Rico

Old San Juan

Wed Oct 29 12:44:12 AST 2014

US Bankruptcy Court District of P.R.  
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Jose V Toledo Fed Bldg &amp; US Courthouse

300 Recinto Sur Street, Room 109

San Juan, PR 00901-1964

BANCO POPULAR

BANKRUPTCY DEPARTMENT

PO BOX 362708

SAN JUAN, PR 00936-2708

BANCO POPULAR DE PR

P.O. BOX 362708

SAN JUAN, PR 00936-2708

BANCO POPULAR DE PUERTO RICO

GPO BOX 2708

SAN JUAN, PR 00936

BANCO POPULAR DE PUERTO RICO

P.O. BOX 363228

SAN JUAN, PR 00936-3228

BAYVIEW EMERGENCY ASSOCIATES 1

66 WEST GILBERT ST

RED BANK, NJ 07701-4948

COOP LA SAGRADA FAMILIA

PO BOX 102

COROZAL, PR 00783-0102

CORNERSTONE CREDIT SERVICE

PO BOX 92090

ANCHORAGE, AK 99509-2090

CRIM

PO BOX 195387

SAN JUAN, PR 00919-5387

DORAL BANK

P.O. BOX 71529

SAN JUAN, PR 00936-8629

DORAL BANK

PO BOX 70308

SAN JUAN, PR 00936-8308

FAIRBANKS MEMORIAL HOSPITAL

BILLING DEPARTMENT

1650 COWLES ST

FAIRBANKS, AK 99701-5907

JC PENNEY - PR

PO BOX 364788

SAN JUAN, PR 00936-4788

MARTINEZ &amp; TORRES LAW OFFICES

PO BOX 192938

SAN JUAN, PR 00919-3409

(p)CREDITORS BANKRUPTCY SERVICE

PO BOX 800849

DALLAS TX 75380-0849

NCO FINANCIAL SYSTEMS OF PUERTO RICO INC

BANKRUPTCY NOTICE

P.O. BOX 192478

HATO REY, PR 00919-2478

REVENUE RECOVERY CORP

612 GAY ST

KNOXVILLE, TN 37902-1603

SYNCHRONY BANK

PO BOX 960061

ORLANDO, FL 32896-0061

SYNCHRONY BANK/JC PENNEY PR

PO BOX 965007

ORLANDO, FL 32896-5007

TREASURY SECRETARY

DEPARTAMENTO DE HACIENDA

P.O. BOX 9024140

SAN JUAN, PR 00902-4140

CARLOS C ALSINA BATISTA

CARLOS ALSINA BATISTA LAW OFFICES PSC

638 ALDEBARAN ST

BANCO DE DESARROLLO ECONOMICO BLDNG

SECOND FLOOR SUITE HQ 7

SAN JUAN, PR 00920

CARMEN MARIA IBARRA ORTEGA

RR14 BUZON 5074

BAYAMON, PR 00956-9730

JOSE RAMON CARRION MORALES

PO BOX 9023884

SAN JUAN, PR 00902-3884

MONSITA LECAROZ ARRIBAS

OFFICE OF THE US TRUSTEE (UST)

OCHOA BUILDING

500 TANCA STREET SUITE 301

SAN JUAN, PR 00901

MILITARY STAR  
3911 S WALTON WALKER BLVD  
DALLAS, TX 75236

DISPUTES UNIT  
PO BOX 650410  
DALLAS, TX 75265-0410

Mailable recipients	24
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